Office-Supreme Court, U.S.
FILED
JUN 13 1985
ALEXANDER L. STEVAS
CLERK

No. 85-95

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

WALTER J. MOELLER, PRO SE, APPELLANT

V.

H. CARRADINE, Individually, Internal Revenue Service, et al.
APPELLEES

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

# JURISDICTIONAL STATEMENT

WALTER J. MOELLER
Route 2
West Fork AR 72774
Pro Se

92 pp

## QUESTION PRESENTED

I. WHETHER THE DISMISSAL OF APPELLANT'S COMPLAINT, WITHOUT HEARING OR EXAMINATION OF ANY EVIDENCE, EFFECTIVELY DECLARED STATUTES, PASSED BY CONGRESS, WHICH GRANT APPELLANT SPECIFIC REMEDIES FOR THE RECOVERY OF ACTUAL AND PUNITIVE DAMAGES FOR UNLAWFUL ACTS OF GOVERNMENT OFFICIALS, UNCONSTITUTIONAL.

## LIST OF PARTIES

In addition to the parties named in the caption, other parties to the proceeding are DALE FANNON, Individually, Internal Revenue Service; ROSCOE L. EGGERS, JR, Individually, and as Commissioner Internal Revenue Service; WILLIAM F. BARLOW; Individually, Internal Revenue Service; MARLA J. WALKER, Individually, Internal Revenue Service; RANDALL HAYNES, Individually, Internal Revenue Service; PAUL D. WILLIAMS, Individually, Internal Revenue Service; RICHARD C. VOSKUIL, Individually, Internal Revenue Service; V. REGAN, Individually, Internal Revenue Service; M. SORRELLS, Individually, Internal Revenue Service; JAMES WESTBROOK, Individually, Internal Revenue Service; S. R. MCKEEVER, Individually, Internal Revenue Service; and UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE INTERNAL REVENUE SERVICE, et al, whose names are indicated by the records of the Internal Revenue Service, Individually.

In accordance with Rule 28.4 (a) and (b) the Solicitor General is made a party herein.

TABLE OF CONTENTS


| | Page |
|---|---|
| Jurisdictional Statement | 1 |
| Introductory Statement | 1 |
| Opinions Below | 3 |
| Jurisdiction | 6 |
| Constitutional and Statutory Provisions | 7 |
| Statement of the Case | 12 |
| THE QUESTION IS SUBSTANTIAL | 15 |
| Question Presented | 17 |
| Conclusion | 48 |
| Appendix A | 50 |
| Appendix B | 54 |
| Appendix C | 57 |
| Appendix D | 61 |
| Appendix E | 64 |
| Appendix F | 66 |
| Appendix G | 68 |
| Appendix H | 70 |
| Appendix I | 72 |
| Appendix J | 73 |
| Appendix K | 74 |

Appendix L 75

Appendix M 76

Appendix N 77

Appendix O 81

TABLE OF AUTHORITIES

Cases:

Barr v. Matteo 360 U.S. 564 (1959 34
Baas v. Hoagland 30
Bevins v. Six Unknown Federal Narcotics Agents 403U.S. 388 (1971) 17,37,38,40,43, 47, & 48
Bothke v. Fluor Engineers & Constructors, Inc. et al 713 F2d 1405 (1983) 16, 35, 38 48
Briscoe v. LaHue 103 Sct. 115 37
Burger v. US 255 U.S. 22 25, 26
Butz v. Economou 438 U.S. 478 (1978) 17,34,35,36,37,42,45, 47
California et al v. Grace Brethren Church et al 457 U.S. 493 (1982) 7, 16, 18
Chicot County Drainage District v. Baxter State Bank 308 U.S. 371 (1940) 28
Connelly v. U.S. 191 F2d 692 25
Fleming v. Rhodes 331 U.S. 100 (1947) 7, 19
Galpin v. Page 18 Wall 350 23
Gomez v. Toledo 446 U.S. 635 (1980)44
Harlow v. Fitzgerald 457 U.S.800 (1982) 17, 36,37,38,44,45 48
Holden v. Hardy169 U.S. 366 23
Knap v. Kinsey 232 F2d 458 (1956) 24
Marbury v. Madison 1 Cranch 137 (1803) 32, 39
McLucas v. DeChamplain 421 U.S. 21 (1975) 7, 18
Murchison, En Re 349 U.S. 133 (1955) 25

Nixon v. Conden 286 U.S. 73 (1932) 39
NLRB v. Phelps 136 F2d 562 25
Owens v. City of Independence 445 U.S. 622 (1980) 17, 43
Powell v. Alabama 287 U.S. 68 (1932) 22
Richardson v. Koshiba 693 F2d 911 (1982) 36
St. Martin Evangelical Lutheran Church v. South Dakota 451 U.S. 722 7
Scheuer v. Rhodes 416 U.S. 247 (1974) 36,37,40,42, 43
Simer v. Rios 661 F2d 655 (1981) 28
Sonue Corp. v. Matsushita Electric Industrial Co. 1 LTD 61 FRD 644 (1974) 29
Spalding v. Vilas 161 U.S. 483 (1896) 34
Stankivitz, Supra 36
Talbert v. Muskegon Construction Co. 305 Mich. 345 25
Udey v. District Director IRS 534 F. Supp. 219 (1982) 17,27,34,35,38, 48
US v. American Friends Service Committee 419 U.S. 7 (1974) 7
US v. Clark 445 U.S. 23 (1980) 7, 19
US v. Christian Echoes National Ministry,Inc. 404U.S. 561 7, 19
US v. Darusmont 449 U.S. 292 (1981) 7, 19
US v. Lee 106 U.S. 196 17, 30
US v. Manos 30
V.I.A. Inc. v. Airco Inc. 597 F2d 220 (1979) 29
Windsor v. McVeigh 93 U.S. 274 (1876) 30
Wood v. Strickland 420 U.S. 308 (1975) 45
Young, Ex Parte 209 U.S. 123 (1908) 40, 41

United States Constitution


| | Page |
|---|---|
| Article III, Section 2 | 2, 7 |
| Article IV, Section 2 | 2, 8 |
| Article VI | 2, 8 |
| Amendment I | 2, 9, 24 |
| Amendment IV | 9, 38 |
| Amendment V | 2,9,21,24 29 |
| Amendment VI | 2, 9 |
| Amendment VII | 2,9,24, 29 |
| Amendment VIII | 2, 10 |
| Amendment IX | 2, 10 |
| Amendment X | 2, 10 |
| Amendment XIII | 10 |
| Amendment XIV | 2,10,21,24, 29 |


Statutes


| | |
|---|---|
| Title 26 U.S.C. | |
| Section 7422 | 2,11,15,19,27 28 |
| Section 7804 | 2,11,16, 19 |
| Title 28 U.S.C. | |
| Section 1252 | 6,17,18, 19 |
| Section 1343 | 2,11,16, 20 |
| Section 1361 | 2,11, 20 |

Section 1391 2,11, 20

Title 42 U.S.C.

Section 1983 2,11,16, 20

Section 1985 2,11,16, 20

Section 1986 2,11,16 20

Section 1988 2,11,16 20

FR Civ. P.

Rule 60 (b)(4) 11,28, 29

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

No. _____

WALTER J. MOELLER, Pro Se.,

Appellant

v.

H. CARRADINE, Individually, Internal Revenue Service, et al.

Appellees

---

On Appeal From The United States Court Appeals For the Eighth Circuit

---

# JURISDICTIONAL STATEMENT

## INTRODUCTORY STATEMENT

Appellant Moeller, pro se, appeals from the the final judgement of the Eighth Circuit Court of Appeals dated March 21, 1985 affirming the Order and Memorandum Opinion of H. Franklin Waters

of the United States District Court for the Western District of Arkansas, Fayetteville Division, dismissing Appellants case without hearing or examining any evidence, dated January 3, 1985. Petition for rehearing En banc denied April 24, 1985.

The summary dismissal of this case without hearing and without examination of any evidence effectively declared Sections 7422 and 7804(b) of Title 26 U.S.C. (Internal Revenue Code), Section 1343, 1361 and 1391(e) of Title 28 U.S.C. Sections 1983, 1985, 1986 and 1988 of Title 42 U.S.C. unconstitutional and denied Appellant's constitutional rights under the provisions of Article III, section 2, Article IV, section 2, Article VI and amendments I, V, VI, VII, VIII, IX, X, and XIV to the Constitution of the United States.

## OPINIONS BELOW

The Order and Memorandum Opinion of Judge H. Franklin Waters of the United States District Court for the Western District of Arkansas, Fayetteville Division dated January 3, 1985 appears as Appendix A. Appellants demand for jury trial dated January 3, 1985 appears as Appendix B. Appellants Notice of Appeal to the Eighth Circuit Court of Appeals dated January 31, 1985 appears as Appendix C. The District Court's transmittal of the original file dated February 4, 1985 appears as Appendix D. The Eighth Circuit Court of Appeals letter acknowledging and docketing the appeal with dates for filing briefs of both parties and dated February 13, 1985 appears as Appendix E. The Eighth Circuit Court of Appeals Order to Show Cause dated February 25, 1985 appears as

Appendix F. Appellants appeal brief was submitted on March 6, 1985 but is not included in the Appendix. Appellants Motion to dismiss the Order to Show Cause was submitted on March 6, 1985 but is not included in the Appendix. The Eighth Circuit Court of Appeals order affirming the District Courts dismissal of this case without hearing and without examining any evidence dated March 21, 1985 appears as Appendix G. Appellants petition for rehearing En banc dated March 29, 1985 is not included in the Appendix. The Eighth Circuit Court of Appeals order denying the Petition for rehearing En banc dated April 24, 1985 appears Appendix H. Appellants letter to the Clerk of the Appeals Court requesting the names of the judges who issued the Order to Show Cause dated April 2, 1985 appears as Appendix I. Appellants letter requesting the names of the judges who

issued the order dismissing appellants case dated April 2, 1985 appears as Appendix J. The letter from the clerk of the Appeals Court stating that the judges who issued the Order to Show Cause are not made public, dated April 5, 1985 appears as Appendix K. Appellants letter to the Clerk of the Appeals Court demanding that the names of the judges issuing the Order to Show Cause be furnished, dated April 15, 1985, appears as Appendix L. The letter from the Clerk of the Court of Appeals listing the names of the judges who issued the Order to Show Cause and dismissed the case appears as Appendix M. Appellants Notice of Appeal to the United States Supreme Court dated April 15, 1985 appears as Appendix N. The clerk's letter from the Appeals Court noting the filing of Appellant's Notice of Appeal to the United States Supreme Court, dated April 19, 1985,

appears as Appendix O.

## JURISDICTION

The Order and Memorandum Opinion of the District Court was entered on January 3, 1985, (Appendix A). The Appeals Court's order affirming the District Court's order dismissing the case without hearing and without examining any evidence was entered on March 21, 1985, (Appendix G). The Appeals Court rejecting appellant's Petition for Rehearing En banc was filed on March 29, 1985 (Appendix H). A Notice of Appeal to this court was timely filed on April 18, 1985 in the United States Court of Appeals for the Eighth Circuit (Appendix N). The jurisdiction of this court rests on Title 28 U.S.C. section 1252, which authorizes an appeal to this court from a final judgement of a court of the United

States holding an act of Congress unconstitutional in civil action where the United States or its officials are parties. An appeal lies where, as here, a statute is effectively declared unconstitutional as applied to particular circumstances; Fleming v. Rhodes 331 U.S. 100 (1947); U.S. v. Christian Echoes National Ministry 404 U.S. 561, 563 (1972); U.S. v. American Friends Service Committee, 419 U.S. 7 (1974); California Et al v. Grace Brethren Church Et al , 457 U.S. 393, 405 (1982). McLucas v. De Champlain, 421 U.S. 21 (1975). U.S. v. Darusmont, 449 U.S. 292, 293 (1981). U.S. v. Clark, 445 U.S. 23, 26 n. 2, (1980). St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 722 at 780 n. 9. (1981)

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, Section 2 of the United

States Constitution provides in relevant part:

> "The Judicial Power shall extend to all cases in Law and Equity arising under this Constitution....."

Article IV, Section 2 of the United States Constitution provides in relevant part:

> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article VI of the United States Constitution provides in relevant part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuant thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The following amendments to the United States Constitution are quoted in

relevant parts:

AMENDMENT I

...."to petition the Government for a redress of grievances."

AMENDMENT IV

...."The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT V

...."nor be deprived of life, liberty, or property without due process of law."

AMENDMENT VI

...."to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence."

AMENDMENT VII

...."in suits at common law, where the value in controversy shall exceed twenty dollars, the right of

trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

AMENDMENT VIII

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

AMENDMENT IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

AMENDMENT X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

AMENDMENT XIII

Section 1. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

AMENDMENT XIV

Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

> States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Sections 7422 and 7804 of Title 26 U.S.C. (Internal Revenue Code) provide in general for the taxpayer to pay the tax assessed and then seek recovery in district court of the money assessed and paid and provides for trial by jury.

Sections 1343, 1361 and 1391 of Title 28 U.S.C. grants District Court jurisdiction and authorizes suits against government officials.

Sections 1983, 1985, and 1986 and 1988 of Title 42 U.S.C. provide for the recovery of damages from government officials who deny citizens their constitutional rights.

Rule 60(b)(4) provides for rendering a

court decision null and void where the court has denied the litigant due process of law.

## STATEMENT OF THE CASE.

Appellant initiated this action on December 27, 1984 in the United States District Court for the Western District of Arkansas, Fayetteville Division, to recover money, had and received, by the Internal Revenue Service. The money was paid to the Internal Revenue Service under protest to satisfy a false and fraudulent assessment made by the Internal Revenue Service as a result of an audit of Appellant's tax return for 1979. Appellant's cause of action was also to recover damages from certain Internal Revenue Agents because of their unlawful acts and acting outside the scope and perimeters of their authority,

making false and fraudulent statements and assessments, under color of law.

Statutory and constitutional questions herein were raised and brought directly before the District Court in Appellant's Complaint as a matter of one of the immutable principles of justice which inhere in the very idea of free government which no member of the union may disregard. These same statutory and constitutional issues were brought before the United States Eighth Circuit Court of Appeals in Appellant's brief, submitted on March 6, 1985, and Appellants Motion to Dismiss Order to Show Cause filed March 6, 1985.

The issue as to acts of Congress effectively declared to be unconstitutional by the District Court and the Court of Appeals was raised in Appellants Petition for Rehearing En banc, filed March 29, 1985 in the United

States Court of Appeals for the Eighth Circuit.

Appellants case was filed in the United States District Court for the Western District of Arkansas, Fayetteville Division on December 27, 1985. Judge H. Franklin Waters dismissed this case with prejudice, Sua sponte, without hearing and without examination of any evidence in his Order and Memorandum Opinion dated January 3, 1985. Appellant filed a timely Notice of Appeal in the District Court on January 31, 1985 and filed his Appeal Brief in the United States Court of Appeals for the Eighth Circuit on March 6, 1985.

The Appeals Court issued an Order to Show Cause dated February 25, 1985 and Appellant responded with a Motion to dismiss Order to Show Cause with arguments on March 6, 1985.

The Appeals Court issued an order

affirming the Order and Memorandum Opinion of the District Court without comment dated March 21, 1985.

Appellant filed a Petition for Rehearing En banc dated March 29, 1985.

The Appeals Court denied appellants petition by order, without comment, on April 24, 1985.

Appellant filed a timely Notice of Appeal to the United States Supreme Court in the United States Eighth Circuit Court of Appeals on April 16, 1985.

## THE QUESTION IS SUBSTANTIAL

This case involves broad constitutional questions. The issue of the constitutionality of statutes passed by Congress and set aside by the courts in dismissing appellant's action without hearing or examining any evidence has effectively declared Sections 7422 and

7804(b) of Title 26 U.S.C., Section 1343 of Title 28 U.S.C. and Sections 1983, 1985, 1986 and 1988 of Title 42 U.S.C.to be unconstitutional and is a topical issue of pervasive and substantial proportions. Reference is made to California v. Grace Brethren Church 457 U.S. 393 at 405 (1982).

Other constitutional issues raised in this case concerning the constitutional rights of appellant are of substantial and grave concern and should be considered. The issue of contradiction between the decisions of the Eighth District Court in this case and the Ninth District Court in the case of Bothke v. Fluor Engineers and Construction, Inc., et al 713 F.2d 1405 (1983), creates considerable confusion and should be resolved in order to eliminate uncertainty. The District Court in this case in its Order and Memorandum Opinion,

cited the case Udey v. District Director, I.R.S. 534 F. Supp. 219 (1982), also decided by Judge H. Franklin Waters, which is in direct contradiction with several Supreme Court decisions pertaining to immunity of government officials. See United States v. Lee, 106 U.S. 196; Bevins v. Six Unknown Federal Narcotics Agents 403 U.S. 388, (1971); Butz v. Economou 438 U.S. 478 (1978); Owens v. City of Independence 445 U.S. 622 (1980), and Harlow v. Fitzgerald 457 U.S. 800 (1982). Accordingly, a Notice of Appeal to this court has been timely filed under the provisions of Title 28 U.S.C. section 1252.

## QUESTION PRESENTED

I. WHETHER THE DISMISSAL OF APPELLANT'S COMPLAINT, WITHOUT HEARING OR EXAMINATION OF ANY EVIDENCE, EFFECTIVELY DECLARED STATUTES, PASSED BY CONGRESS, WHICH GRANT APPELLANT SPECIFIC REMEDIES FOR THE RECOVERY OF ACTUAL AND PUNITIVE DAMAGES FOR UNLAWFUL ACTS OF GOVERNMENT OFFICIALS, UNCONSTITUTIONAL.

Although the District Court and the Appeals Court did not specifically declare acts of Congress unconstitutional in arbitrarily dismissing appellant's case without hearing or examining any evidence, the failure of the court to abide by these statutes effectively invalidated the statutes and thus declared them unconstitutional. In support of this contention, appellant refers to California v. Grace Brethren Church 457 U.S. 393 at 404-406 (1982), and quotes as follows:

> "In McLucas v. DeChamplain, 421 U.S. 21 (1975), we stated that Section 1252 was an unambiguous exception to the policy of minimizing the mandatory docket of this Court. Indeed, the 'language of the statute sufficiently demonstrates its purpose: to afford immediate review in this Court in civil actions to which the United States or its officers are parties and thus will be bound by a holding of unconstitutionality.' Id., at 31. Moreover, this Court has appellate jurisdiction under Section 1252 'when the ruling of unconstitutionality is made in the

> application of the statute to a particular circumstance,... rather than upon the challenged statute as a whole.' Fleming v. Rhodes, 331 U.S. 100, 102-103 (1947) (discussing the predecessor to Section 1252, Act of Aug. 24, 1937, 50 Stat. 751). See United States v. Christian Echoes National Ministry, Inc., 404 U.S. 561, 532 (1972) (per curiam); United States v. Darusmont, 449 U.S. 292, 293 (1981). Finally, Section 1252 provides jurisdiction even though the lower court did not expressly declare a federal statute unconstitutional, so long as a determination that a statutory provision was unconstitutional 'was a necessary predicate to the relief' that the lower court granted. United States v. Clark, 445 U.S. 23, 26, N.2 (1980). In the present case, the District Court did not expressly hold section 3309(b) of FUTA unconstitutional as applied to the Category III appellees, but the effect of its several opinions and orders was to make 'the United States or its officers...bound by a holding of unconstitutionality."

The statutes thus effectively declared unconstitutional by the courts action in dismissing appellant's complaint without hearing and without examining any evidence are Section 7422

of Title 26, U.S.C. which specifies the procedure for a tax payer to follow in order to recover money unlawfully assessed and collected. Section 7804 of Title 26 U.S.C. specifically authorizes trial by jury in cases brought to recover taxes illegally assessed and collected.

Section 1343 of Title 28 U.S.C. grants original jurisdiction to district courts in cases of violation of constitutional and civil rights of citizens by government officials and permits citizens to recover damages against said government officials. Section 1361 of Title 28 U.S.C. grants original jurisdiction to district courts to issue writs of mandamus which was one of appellants cause of action in his complaint. Section 1391 of Title 28 U.S.C. establishes venue.

Sections 1983, 1985, 1986 and 1988 of Title 42 U.S.C. are part of what is known

as the civil rights act. These statutes provide remedies for citizens to sue and recover damages from government employees individually who knowingly and wilfully deprive citizens of their constitutional rights.

Due Process is one of the fundamental rights set forth in the amendments V and XIV of the the United States Constitution and are quoted in pertinent parts as follows:

AMENDMENT V

> No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

> liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appellant will not attempt to substitute or interject his rationale as to what "due process of law" consists of, but rather, will rely on the excerpts from the Supreme Court, speaking as the only Court to derive its jurisdiction from the Constitution, in its considerations of cases and questions before it on the subject matter of "due process."

On the question of the conception of due process of law, Appellant quotes the words of Mr. Justice Sutherland in Powell v. Alabama, 1932, 287 U.S. 68 below:

> "It has never been doubted by this court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgement, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirements of due process of law. The words of Webster, so often quoted, that by

> 'the law of the land' is intended 'a law which hears before it condemns,' have been repeated in varying forms of expression in a multitude of decisions. In Holden v. Hardy, 169 U.S. 366, 389, the necessity of due notice and an opportunity of being heard is described as among the 'immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.' And Mr. Justice Field, in an earlier case, Galpin v. Page, 18 Wall 350, 368-369, said that the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. 'Judgement without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.' Citations to the same effect might be indefinitely multiplied, but there is no occasion for us to do so."

It is self evident from the above quote that appellant was denied due process when the court dismissed his case without hearing and without examining any evidence. Appellant has been given no opportunity to present his case on the

merits as required by law.

One of the fundamental rights of a sovereign citizen under the United Stated Conatitution is to expect, no, DEMAND, as his inalienable right, a fair, just and impartial trial. Justice is one of the cardinal principles as set forth in the preamble to the United Stated Constitution. The right is further set forth in the First Amendment (redress of grievances): the Fifth Amendment (due process): the Seventh Amendment (trial by jury): and the Fourteenth Amendment (due process and equal protection).

In support of this inalienable right, Appellant respectfully submits to the court the following citations as authority for his contention that the Order and Memorandum Opinion of Judge Waters should be reversed.

In Knap v. Kinsey 1956, 232 F. 2d 458 at 465, the court said:

> "One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal and that fairness requires an absence of actual bias or prejudice in the trial of the case. If this basic principle is violated, the judgement must be reversed."...."Bias or prejudice on the part of the Judge may exhibit itself prior to the trial by acts or statements on his part."

The above citation cited In Re Murchison 349 US 133, 136, Talbert v. Muskegon Construction Co. 305 Mich 345, 348, Burger v. US, 255 US 22, Moskum v. US, 143 F. 2d 130, and N.L.R.B. v. Phelps, 136 F.2d 562

In Connelly v. United States 191 F. 2d 692, 697, the Court said:

> "It is not enough that the Judge, despite his predetermination of essential facts, may put them aside and conduct a fair trial but that there also shall be such an atmosphere about the proceedings that the public will have the assurance of fairness and impartially."

In Re Murchinson 1955, 349 U.S. 133

136, the Supreme Court said:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."

In Berger v. U.S. 255 U.S. 22, it is stated:

> "...the tribunals of the country shall not only be impartial in the controversies submitted to them, but shall give assurance that they are impartial..."

The bias and prejudice of Judge Waters in this case is clearly set forth in his Memorandum Opinion as follows:

1. The use by Judge Waters in his Memorandum Opinion of the term "Tax Protester."
2. The obvious predetermination of the case by Judge Waters summary dismissal without hearing, without motion and in the

absence of any evidence and on his own, Sua sponte.

3. Using the Udey case (Udey v. District Director 1982, 534 F. Supp. 219) as authority, Judge Waters summarily dismissed Appellant Moeller's case contending that Appellant's case was an action to restrain the Internal Revenue Service from collection of taxes. This is a false statement on the part of Judge Waters. Appellants case is for recovery of money paid as a result of fraudulent assessment after appeal for refund was made to the commissioner of the Internal Revenue Service in accordance with Title 26 U.S.C. Sec. 7422. Judge Waters in his quoted authority (Udey) then goes on to

state that the remedy of the Appellant is to "bring an action in District Court to recoup it. (Title 26 U.S.C. Sec. 7422)." This is exactly the action taken by Appellant in this case on which appeal is made as a result of the action being dismissed by Judge Waters.

Where the court has denied appellant due process, as in this case, or appellant has been denied any constitutional right by the court, then the order of the court is null and void under the provisions of the Federal Rules of Civil Procedure, Rule 60(b)(4). Appellant cites the following cases in support of this contention.

In the case of Simer v. Rios 661 F. 2d 655 (1981), the court said:

> "Mere error in the entry of a judgement does not render a judgement void for purposes of Rule 60(b)(4). Chicot County Drainage District v. Baxter State

Bank, 308 U.S. 371, 374-78, 60 S. Ct. 317, 318-20, 84 L.Ed. 329 (1940). But where an error of constitutional dimension occurs, a judgement may be vacated as void. One such constitutional error for concluding that a judgement is void for purposes of Rule 60(b)(4) is if the judgement was entered in violation of due process."

Also in the case of V. T. A., Inc. v. Airco, Inc. Cite as 597 F.2d 220 (1979), the court stated:

"For a judgement to be void under Rule 60(b)(4), it must be determined that the rendering court was powerless to enter it. If found at all, voidness usually arises for lack of subject matter jurisdiction or jurisdiction over the parties. It may also arise if the court's action involves a plain usurpation of power or if the court has acted in a manner inconsistent with due process of law." (Emphasis added).

In this instance, the court has certainly usurped its power and denied appellant due process of law and trial by jury, (Amendments V, XIV, and VII).

Again, in the case of Sonue Corp. v. Matsushita Electric Industrial Co.1,

LTD. Cite as 61 F.R.D. 644 (1974), the court stated:

> "A judgement is void within the meaning of F.R.Civ.P. 60(b)(4) if the count rendering it acted in a manner inconsistent with due process of law. Bass v. Hoagland, supra; United States v. Manos, supra; see 7 Moore's Federal Practice, 60.25 [2], pp. 309-10 and cases there cited; 3 Barron and Holtzoff, Federal Practice and Procedure, Section 1327 at P. 413 (Wright ed., 1958); see also Windsor v. McVeigh, 93 U.S. 274, 277-278, 283-284, 23 L.Ed. 914 (1876).

The Supreme Court in U.S. v. Lee, 106 U.S. 196 at 220, states as follows:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." (Emphasis added by Appellant).
>
> It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

> Courts of justice are established, not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government; and the docket of this court is crowded with controversies of the latter class.
>
> Shall it be said, in the face of all this, and of the acknowledged right of the judiciary to decide in proper cases, statutes which have been passed by both branches of Congress and approved by the President to be unconstitutional, that the courts cannot give a remedy when the citizen has been deprived of his property by force, his estate seized and converted to the use of the government without lawful authority, without process of law, and without compensation, because the President has ordered it and his officers are in possession?
>
> If such be the law of this country, it sanctions a tyranny which has nonexistence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights."

Is this statement of the United States Supreme Court a play upon words? If not, where is appellant's protection? Where is appellant's remedy at law? As a

sovereign citizen, does appellant have the protection of the law? Has this country degenerated into a government de facto rather that de jure? Shall this country be ruled by tyranny and abusive process?

In Marbury v. Madison 1 Cranch 137 (1803), The Supreme Court Stated:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgement of his court."

And again the same court supra, in reference to remedies, stated:

> "In the 3d vol. of his commentaries, p. 23, Blackstone states two cases in which a remedy is afforded by mere operation of law."
> "In all other cases, " he says, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever

that right is invaded."

> "And afterwards, p. 109. of the same vol. he says, "I am next to consider such injuries as are cognizable by the courts of the common law. And herein I shall for the present only remark, that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals, are for that very reason, within the cognizance of the common law courts of justice; for it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress."

Here we have a high sounding principal of law that fails miserably in its application. What remedy does appellant have when the very courts that are under oath to uphold the laws violate their oath and deny sovereign citizens their right of redress of grievances; permit confiscation of property without redress, deny due process, deny trial by jury, equal protection under the law, and rights and privileges retained by the

people?

In this case, Judge Waters cited Udey v. District Director, IRS, 534 F. Supp. 219 (1982), of which he also wrote the opinion. In Udey, Judge Waters indicated that Internal Revenue Service employees were absolutely immune from suit and stated as follows:

> "The law clearly is that a federal officer is absolutely immune from action based upon common law torts occurring within the scope of the officer's duty. Spalding v. Vilas, 161 U.S. 483,16 S.Ct. 631, 40 L.Ed. 780 (1896); Barr v. Matteo, 360 U.S. 564, 79 S.Ct., 1335, 3 L.Ed.2d 1434 (1959); Butz v. Economou, 438 U.S. 78, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978).
>
> Even if Mr. Udey's pleadings alleged torts of constitutional dimensions, absolute immunity will still bar action against employees of administrative agencies who have the discretionary function to decide whether a proceeding shall be brought. Butz v. Economou, supra."

This statement by Judge Waters is in direct contradiction with the Ninth Circuit Court of Appeals in the case of

Bothke v. Fluor Engineers and Constructors, Inc., et al, 713 F.2d 1405 (1983).

In the Udey case, as in this case, Judge Waters acted on his own without recourse to hearing and although the Udey case differed from this case in that Udey was apparently attempting to prevent the Internal Revenue Service from collecting taxes while appellant has paid the total amount illegally assessed and is attempting to recover the money that he had paid as a result of the illegal assessment.

In Bothke, supra, the court stated as follows:

> "Formal administrative adjudication shares with judge-supervised trials two key qualities that diminish the need for individual suits to correct constitutional transgressions: (1) the impartiality of the decision maker and (2) the reliability of the information forming the basis of the decision. See Butz, 438 U.S. at 512-13, 98 S.Ct. at 2913-14. Safeguards inherent in both forums

foster these qualities."

"Qualified immunity for federal executive officials is the general rule and absolute immunity the exceptional case, a proposition first voiced in Butz, 438 U.S. at 506-08, 98 S.Ct. at 2910-12, and recently reiterated in Harlow v. Fitzgerald, --- U.S.---, 102 S.Ct. 2727,2736, 73 L.Ed.2d 396 (1982). Were we to accord absolute immunity to defendant Terry under the guise of applying Butz, its carefully delineated exception would overwhelm the rule set forth in that case."

That IRS agents performing specific tasks had absolute immunity in Stankevitz does not mean that all IRS agents are also absolutely immune irrespective of what tasks they perform. There is no such blanket immunity for an arm of government."

"The immunity available depends not on an official's job title or agency, but on the function that person was performing when taking the actions that provoked the lawsuit. See, e.g., Richardson v. Koshiba, 693 F.2d 911, 913-14 (9th Cir. 1982) (even judicial personnel are not absolutely immune when performing executive functions); Harlow, 102 S.Ct. at 2735. See also Scheuer v. Rhodes, 416 U.S. at 247, 94 S.Ct. at 1692."

As demonstrated, Terry does not qualify for the quasi-judicial absolute immunity delineated in

Butz. We must inquire if she was entitled to absolute immunity on some other ground."

Absolute immunity is accorded only to those public officials 'whose special functions or constitutional status requires complete protection from suit.' Harlow, 102 S.Ct. at 2732. These are members of the legislature and judiciary performing their characteristic functions, and the President of the United States. See id. at 2732-33.

For executive officials other that the President, the Supreme Court has extended absolute immunity to those playing an integral part in judge-supervised trials or in closely analogous proceedings. See id. at 2733 (citing Butz, 438 U.S. at 508-17, 98 S.Ct. at 2911-16); Briscoe v. LaHue, --- U.S. at ---, 103 S.Ct. at 1115-21. It has denied absolute immunity to senior aids to the President, Harlow, 102 S.Ct. at 2736, Cabinet members, see id. at 2734 (citing Butz, 438U.S. at 506, 98 S.Ct. at 2910-11). and state governors, see Harlow, 102 S.Ct. at 2733 (citing Scheuer v. Rhodes, 416 U.S. at 247-48, 94 S.Ct. at 1692).

Because Terry does not fit within the subcategory of executive officials held absolutely immune in Butz, a new category of absolutely immune executive officials would have to be created to exempt her unqualifiedly from liability. New categories are

> recognized only in 'exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of public business.' Butz, 438 U.S. at 507, 98 S.Ct. at 2911.
>
> A defendant official bears the burden of proving that 'public policy requires an exemption of that scope,' id. at 506, 98 S.Ct. at 2911, that the 'responsibilities of his office embraced a function so sensitive as to require a total shield from liability.' Harlow, 102 S.Ct. at 2736. A court evaluates this possibility by assessing the importance of public policy considerations through 'reference to the common law, or more likely, our constitutional heritage and structure.' Id. at 2736 n. 20.

The Udey case as cited in appellants case and taken as applicable to appellant, makes the court's decision in direct conflict with the decision in the Bothke case. The decision of the court in appellant's case and the Udey case is also in conflict with the following U.S. Supreme Court cases.

In the case of Bivens v. Six Unknown

Federal Narcotics Agents, (1971) 403 U.S. 388, Mr. Justice Brennan delivered the opinion of Court saying:

> "That damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition. Historically, damages have been regarded as the ordinary remedy for a invasion of personal interests in liberty. See Nixon v. Condon, 286 U.S. 73 (1932)"

The court stated,

> "Of course, the Fourth Amendment does not in so many words provide for its enforcement by an award of money damages for the consequences of its violation. But it is...well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."

The court stated:

> "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. Marbury v. Madison, 1 Cranch 137, 163 (1803). Having concluded that petitioner's complaint states a cause of action under the Fourth Amendment, supra, at 390-395, we hold that petitioner is entitled to recover money damages for

> any injuries he has suffered as a result of the agents' violation of the Amendment."

In Bivens, the Court removed all limits of immunity on the particular individuals to permit recovery of damages for their unlawful acts. In later cases the immunity issue was more clearly defined to apply limited immunity to certain individuals acting within the perimeters of their official duties but denied immunity when the acts were unlawful or in violation of Constitutional rights, or acted in violation of the Civil Rights Act.

In Scheuer v. Rhodes (1974), 416 U.S. 232, the Supreme Court, in quoting Ex parte Young, stated,

> "When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether the plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to

support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader."

"However, since Ex parte Young, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. Ex parte Young teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States."

In the above cases, the court again indicated that when government officials are held liable for damages for their

misconduct, it would be a deterrent to unlawful acts by all government officials.

The court further stated in Scheuer:

> "Analyzing the complaints in light of these precedents, we see that petitioners allege facts that demonstrate they are seeking to impose individual and personal liability on the named defendants for what they claim-but have not yet established by proof-was a deprivation of federal rights by these defendants under color of state law. Whatever the plaintiffs may or may not be able to establish as to the merits of their allegations, their claims, as stated in the complaints, given the favorable reading required by the federal rules of Civil Procedure, are not barred by the Eleventh Amendment. Consequently, the District Court erred in dismissing the complaints for lack of jurisdiction."

In Butz v. Economou (1978) 438 U.S. 478, the court made it clear that there was to be no distinction between state officials and United States officials, as set forth in the syllabus p. 478.

> "2. Without congressional directions to the contrary, it would be untenable to draw a distinction for purposes of immunity law

between suits brought against state officials under 42 U.S.C. 1983, Scheuer v. Rhodes, 416 U.S. 232, and suits brought directly under the Constitution against federal officials, Bivens v. Six Unknown Fed. Narcotic Agents, 403 U.S. 388. Federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers. P. 496-504."

"3. In a suit for damages arising from unconstitutional action, federal executive officials exercising discretion are entitled only to the qualified immunity specified in Scheuer v. Rhodes, supra, subject to those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of the public business. While federal officials will not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law, there is no substantial basis for holding that executive officers generally may with impunity discharge their duties in a way that is known to them to violate the Constitution or in a manner that they should know transgresses a clearly established constitutional rule. p. 504-508."

In Owens v. City of Independence 445

U.S. 622, (1980), the court said that the likelihood of suits would act as a deterrent to government officials, preventing their violating of constitutional rights of citizens, and that such a deterrent would promote better government; a worthy goal for the court.

In Harlow v. Fitzgerald 457 U.S. 800 (1982), the court delineated the difference between persons exercising absolute immunity and certain high government officials who were entitled to only qualified immunity. The court further disallowed absolute immunity except in a few exceptional cases. The court then went on to qualify objective and subjective immunities as quoted below:

> "Qualified or 'good faith' immunity is an affirmative defense that must be pleaded by a defendant official. Gomez v. Toledo, 446 U.S. 635 (1980). Decisions of this Court have established that the

'good faith' defense has both an objective" and a "subjective" aspect. The objective element involves a presumptive knowledge of and respect for "basic, unquestioned constitutional rights." Wood v. Strickland, 420 U.S. 308, 322 (1975). The subjective component refers to: "permissible intentions." Ibid. Characteristically the Court has defined these elements by identifying the circumstances in which qualified immunity would not be available. Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official "knew or reasonably should have know that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury..." Ibid. (emphasis added).

Other pertinent quotes from Harlow v. Fitzgerald, supra, are set forth as follows:

"[T]he greater power of [high] officials, "we reasoned," affords a greater potential for a regime of lawless conduct." 438 U.S., at 506. Damages actions against high officials were therefore "an important means of vindicating constitutional guarantees." Ibid. Moreover, we concluded that it

would be "untenable to draw a distinction for purposes of immunity law between suits brought against state officials under [42 U.S.C.] sec. 1983 and suits brought directly under the Constitution against federal officials." Id., at 504.

Having decided in Butz that Members of the Cabinet ordinarily enjoy only qualified immunity from suit, we conclude today that it would be equally untenable to hold absolute immunity an incident of the office of every Presidential subordinate based in the White House.

If the President's aides are derivatively immune because they are essential to the functioning of the Presidency, so should the Members of the Cabinet - Presidential subordinates some of whose essential roles are acknowledged by the Constitution itself - be absolutely immune. Yet we implicitly rejected such derivative immunity in Butz.

The undifferentiated extension of absolute "derivative" immunity to the President's aides therefore could not be reconciled with the "functional" approach that has characterized the immunity decisions of this Court, indeed including Gravel itself.

We have not of course had occasion to identify how a Presidential aide might carry this burden. But the general requisites are familiar in our cases. In order to establish entitlement to absolute immunity a

Presidential aide first must show that the responsibilities of his office embrace a function so sensitive as to require a total shield from liability. He then must demonstrate that he was discharging the protected function when performing the act for which liability is asserted.

The resolution of immunity questions inherently requires a balance between the evils inevitable in any available alternative. In situations of abuse of office, an action for damages may offer the only realistic avenue for vindication of constitutional guarantees. Butz v. Economou, supra, at 506; see Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S., at 410 ("For people in Bivens' shoes, it is damages or nothing"). It is this recognition that has required the denial of absolute immunity to most public officers.

Immunity generally is available only to officials performing discretionary functions.

By defining the limits of qualified immunity essentially in objective terms, we provide no license to lawless conduct. The public interest in deterrence of unlawful conduct and in compensation of victims remains protected by a test that focuses on the objective legal reasonableness of an official's acts. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be

> made to hesitate; and a person who suffers injury caused by such conduct may have a cause of action."

It is obvious that the decision of Circuit Court and the Eighth Circuit Court of Appeals in appellants case and the Udey case are in direct conflict with the decision of the Ninth Circuit Court of Appeals in the Bothke case and Supreme Court decisions such as Bevins and Harlow as quoted in the Bothke case, supra.

To avoid injustice and confusion among the various Circuit Courts, it is imperative that this difference be resolved. Therefore, this issue is a major question of substantial concern and should be clarified in absolute terms to avoid any confusion in the future.

## CONCLUSION

For the reasons stated above and the

cases in conflict with the decisions of the District Court and the United States Appeals Court for the Eighth Circuit, this case should be reversed and remanded for trial by jury in order to uphold the constitutionality of the statutes invalidated by the court's action.

Walter J. Moeller
Route 2
West Fork, AR 72774
(501) 839-2484

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER — PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually;
Et Al. — DEFENDANTS

ORDER

On this 3rd day of January, 1985, for the reasons set forth in a memorandum opinion filed contemporaneously herewith, the court, sua sponte, dismisses this matter with prejudice.

IT IS SO ORDERED.

H. Franklin Waters
United States District Judge

U. S. District Court
Western Dist. Arkansas
FILED
JAN 3 1985
Pat L. Graham, Jr., Clerk
By
Deputy Clerk

0 72A

U. S. District Court
Wstrn Dist. Arkansas
FILED
JAN 3 1985
Pat L. Graham, Jr., Clerk
By
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually;
Et Al. DEFENDANTS

**MEMORANDUM OPINION**

This appears to be another of the "tax protester" lawsuits which are frequently filed in this court. Much of the 47-page complaint filed by the plaintiff contains phrases which are almost identical to phrases which are found in many of the numerous lawsuits of this type which have been filed.

Plaintiff, Walter J. Moeller, sues Roscoe L. Eggers, Jr., Commissioner, Internal Revenue Service, and eleven other named individuals who are alleged to be agents of or employees of the Internal Revenue Service. In an apparent attempt to make certain that he had sued everyone who had in the past or might in the future deal with his tax returns, he also sued "Unknown Public Servant Employees Of The Internal Revenue Service, et al., whose names are indicated by the records of the Internal Revenue Service, Individually." While much of the 47 pages of the complaint contains mere conclusions, it is apparent that plaintiff complains about the validity of certain tax assessments

which have been made against him, and the attempts by the Internal Revenue Service to collect the taxes which it, through its Commissioner and other employees, claims are due. Plaintiff claims that these attempts violate almost every constitutional right and civil right afforded citizens of the United States by the United States Constitution, and prays for $100,000,000.00 in punitive damages; $100,000,000.00 in compensatory damages; $2,216.43 in actual damages; and for a writ of mandamus compelling the defendant to "abide by his oath of office and force all the civil servant employees of the Internal Revenue Service to obey and protect the rights of sovereign citizens under the Constitution of the United States of America."

This lawsuit is very similar to the suits which resulted in this court's opinion in Udey v. District Director, 534 F. Supp. 219 (W.D. Ark. 1982), and for the reasons set forth in that opinion, the court finds that Mr. Moeller's cause of action is frivolous and should be dismissed. As the court said in that opinion:

> "The court finds that it clearly does not have jurisdiction in any of these cases and that, as far as an action in this court is concerned, they are frivolous on their face and without merit. Whether Mr. Udey actually owes the tax the Internal Revenue Service says is due is of no importance in determining the jurisdiction of this court. The law very specifically provides a remedy for him and other taxpayers in the event that the Internal Revenue Service is wrong and he does not owe the tax. . . . If Mr. Udey, in fact, does not owe the taxes which have been assessed against him, he has two courses of action which are

> certainly adequate. He may, as pointed out above, refuse to pay the tax and bring an action in tax court (26 U.S.C. § 6213), or he may pay the tax and bring an action in district court to recoup it (26 U.S.C. § 7422). He may not, however, prevent the payment of the tax by seeking to enjoin the United States and its duly authorized officers from collecting the tax, nor may he sue those officers for damages for acting to carry out the duties imposed upon them by law.

As indicated above, plaintiff has sued at least twelve named individuals, all employees of the United States, and all "Unknown Public Servant Employees of the Internal Revenue Service, et al., whose names are indicated by the records of the Internal Revenue Service, Individually." It is obvious on the face of the complaint that there is no basis for this lawsuit, and it would serve no useful purpose for this court to require the numerous individuals named as defendants to retain counsel, at the expense of the taxpayers, to defend this lawsuit. It would serve no purpose, because it is apparent from the face of the complaint that it will, sooner or later, be dismissed because of lack of merit, and, for this reason, the court will, contemporaneously with the issuance of this opinion, sua sponte, dismiss this action.

This 3rd day of January, 1985.

H. Franklin Waters
United States District Judge

U.S. DISTRICT COURT
WESTERN DIST. ARKANSAS
FILED
JAN 3 1985
PAT L. GRAHAM, JR., Clerk
By
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF ARKANSAS

WALTER J. MOELLER
Route 2,
West Fork, AR 72774
Pro Se

PLAINTIFF

VS. CASE NO. 84-5209

H. CARRADINE, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

and

DALE FANNON, Individually
Chief, Tax Accounting Division
Internal Revenue Service
3651 Interregional Highway
Austin, TX 78740

and

ROSCOE L. EGGERS, JR.,Individually
Commissioner, Internal Revenue Service
1111 Constitution Avenue N.W.
Washington, D.C. 20224

and

WILLIAM F. BARLOW, Individually
District Director
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

MARLA J. WALKER, Individually
Revenue Agent
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

RANDALL HAYNES, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

DEFENDANTS

PAUL D. WILLIAMS, Individually
Director, Internal Revenue Service
Federal Building
35 East Mountain Street
Fayetteville, AR 72701

and

RICHARD C. VOSKUIL, Individually
Regional Commissioner
Internal Revenue Service
7839 Churchill Way
Dallas, Texas 75251

and

V. REGAN, Individually
Chief, Research Group
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

M. SORRELLS, Individually
Chief, ACS Branch
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

JAMES WESTBROOK, Individually
Internal Revenue Service
Federal Building, Room 210
35 East Mountain Street
Fayetteville, AR 72701

and

S. R. McKEEVER, Individually
Revenue Officer,
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

and

UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE INTERNAL REVENUE SERVICE, et al, whose names are indicated by the records of the Internal Revenue Service, Individually.

## DEMAND FOR JURY TRIAL

Common law Jury Trial is demanded on all issues of law and fact.

Walter J. Moeller
Route 2
West Fork, AR 72774
Pro Se

U. S. DISTRICT COURT
WESTERN DIST. ARKANSAS
FILED
JAN 31 1985
PAT L. GRAHAM, JR., Clerk
By
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER — PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually; Et Al. — DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that Walter J. Moeller Plaintiff above named, hereby appeals to the United States Court of Appeals for the 8th Circuit from the final judgement order of the above entitled Civil Action No. 84-5209, dismissed with prejudice by the United States District Court, Western District of Arkansas, Fayetteville Division on the 3rd day of January 1985.

---31---day of ---Jan---,1985

Walter J. Moeller
Route 2
West Fork, Arkansas 72774
Pro Se



Appendix C

U. S. COURT OF APPEALS - EIGHTH CIRCUIT

Docket No. _____

**APPELLANT'S FORM A**
**Appeal Information Form**

1. STYLE OF CASE:

Walter J. Moeller
Pro Se

Appellant/Appellee,

vs.

H. Carradine, Individually
Et. Al

Appellant/Appellee.

COUNSEL: NAME ADDRESS, AND TELEPHONE NUMBER

Walter J. Moeller
Route 2, West Fork, AR 72774
Pro Se
839-2484

2. DATE OF DISTRICT COURT JUDGMENT: 3 January 1985

3. BASIS OF: DISTRICT COURT JURISDICTION: U.S. Constitution, Article III, Sect. 2, Article IV, Sect. 2, Article VI, Title 28 USC 1343, 1361, 1391.
APPELLATE JURISDICTION:

4. JURISDICTIONAL ISSUE, IF ANY: None

5. LIST COMPLAINED ERRORS OR ISSUES ON APPEAL. Include two citations under each issue. In jury cases attach challenged instructions, relevant memoranda, and briefs.
DO YOU INTEND THIS STATEMENT TO OPERATE AS A STATEMENT OF THE ISSUES UNDER FRAP 10(b)(3)?
( ) Yes. ( x) No.
Plaintiff denies that his complaint is frivolous.

See attached statement of issues.

6. IS THIS CASE SUITABLE FOR CONSIDERATION IN THIS COURT'S SETTLEMENT PROGRAM?
( ) Yes. ( x) No. If no, state why: More information needed through discovery.

Submitted by: Walter J. Moeller
Signature

Copy 1 - White - Send to appellee (together with an uncompleted Form B).
Copies 2 & 3 - Canary - Pink - Send to Clerk, Eighth Circuit Court of Appeals.
Copy 4 - Goldenrod - Retain.

ATTACHMENT TO NOTICE OF APPEAL, FORM A, TO 8TH CIRCUIT COURT OF APPEALS, CIVIL CASE NO. 84-5209.

Pro Se Plaintiff as Constitutional Right.

Citations:

Brasier V. Jeary
256 F 2d 474

Osburn v. President of the United States Bank
22 US 738

This is not an action to restrain IRS from collection of taxes but an action to recover money illegally assessed and collected. Appeal to recover money paid was made under the provisions of Title 26 USC Section 7422. Said appeal was disapproved. Action to recover money illegally assessed and collected authorized under Title 26 USC Section 7422.

Citations:

Carter V. Campbell
264 F 2d 930

Sirian Lamp Co v. Manning
123 F 2d 776

Udey v. District Director
534 F Supp 219

Title 28 USC Section 1343, Civil Rights - District Court shall have original jurisdiction.

Citations:

Blue v. Craig
505 F 2d 830

Vasquez v. Ferre
405 F Supp 815

Dorak v. Sharp
403 F Supp 863

Title 28 USC Section 144, Bias and Prejudice.

Citations:

23 ALR Fed 638

Benger v. United States
225 US 22

Title 26 USC Section 7214 and Title 18 USC Section 1001 - False Official Document.

Citations:

United States v. Eisenman
396 F 2d 565

United States v. Stern
418 F 2d 198

Summary dismissal,absent hearing or motion. Title 28 USC, Rules 56 and 57 - Federal Rules of Civil Procedure.

Citations:

Jackson Tool and Die Inc. v. Smith
339 F 2d 88

Reed, Wible and Brown Inc. v. Mahogany Run Development Corporation.
550 F Supp 1095

Burtnieka v. City of New York
716 F 2d 982

Forest Hills Early Learning Center Inc. v. Lukhard
728 F 2d 23

Violation of Constitutional Rights, Violation of Title 18, USC, Criminal Statutes, Violation of Civil rights, Title 42, Sections 1983, 1985, 1986.

Citations:

Bevins v. Six Unknown Named Agents of the Federal Bureau of Norcotics.
403 US 388

Harlow v. Fitzgerald
457 US 800

Wood v. Strickland
420 US 308

Butz v. Economou
438 US 478

TRANSMITTAL SHEET

To: CLERK, USCA 8 Date: 2-4-85

From: CLERK, DISTRICT COURT WD/AR Fayetteville Division
(District & City)

Appeal No. _____ Walter J. Moeller v.
H. Carradine, et al

District Court No. 84-5209

TRANSMITTED HEREWITH:

X Original Files 1 (Volumes) __ Designated Clerk's Record

__ Transcript _____ (Vol. & Date) __ Depositions _____ (Name)

_____ (Vol. & Date) _____ (Name)

_____ (Vol. & Date) _____ (Name)

__ Exhibits:

Filing fee has been paid. Rec. #6934

| Plaintiff(s) | Defendant(s) | Joint |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

COMMENTS: cc: Mr. Walter Moeller

. . . . . .

USCA 8 ACKNOWLEDGMENT

RECEIPT To: U.S. District Court
P.O. Box 1447
Fayetteville, AR
72701

By: _____

RETURNED TO DISTRICT COURT

Date: _____

By: _____

| V. | OFF. | DOCKET YR | DOCKET NUMBER | FILING DATE MO | DAY | YEAR | J | NOS | O | D | R 22 | $ DEMAND | JUDGE MAG. NO. | COUNTY | CAT. DEM. | CLASS YR | CLASS NUMBER |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 861 | 5 | 84 | 5209 | 12 | 27 | 84 | 3 | 870 | 1 | | | Number $1,000 9999 | J 6105 M | 05143 | P | 84 | 5209 |

| PLAINTIFFS | DEFENDANTS |
|---|---|
| MOELLER, WALTER J. | CARRADINE, H., Individually<br>FANNON, DALE, Individually<br>EGGERS, RONSCOE L., JR., Individual<br>BARLOW, WILLIAM F., Individually<br>WALKER, MARLA J., Individually<br>HAYNES, RANDALL, Individually<br>WILLIAMS, PAUL D., Individually<br>VOSKUIL, RICHARD C. , Individually<br>REGAN, V. Individually<br>SORRELS, M. Individually,<br>WESTBROOK, JAMES, Individually<br>McKEEVER, S.R., Individually<br>&<br>UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE IRS, et al |

**CAUSE**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)

Article III, Sec. 2, etc., 28 USC, 1343, etc. 42 USC, 1983, etc.

**ATTORNEYS**

WALTER J. MOELLER, Pro Se
Rt. 2
West Fork, AR 72774

| CHECK HERE IF CASE WAS FILED IN FORMA | FILING FEES PAID | | | STATISTICAL CARDS | |
|---|---|---|---|---|---|
| | DATE | RECEIPT NUMBER | C.D. NUMBER | CARD | DATE MAILED |
| | 1227-84 | 6898 | | JS-5 | |
| | | | | JS-6 | |

| DATE | NR. | ~~84-5609~~ 84-5209 PROCEEDINGS Moeller v. Carradine, et al |
|---|---|---|
| 12-27-84 | | COMPLAINT w/demand for jury trial. |
| | | SUMMONS ISSUED to plff for service. |
| 1-3-85 | | Plff's DEMAND FOR JURY TRIAL. |
| | | MEMORANDUM OPINION. (HFW) |
| | | ORDER (HFW) Pursuant to MO, the Court sua sponte, dismisses this matter with prejudice. cc: plff & US Atty. |
| 1-31-85 | | Plff's NOTICE OF APPEAL. ff paid rec. no. 6934 for $70.00 issued. Appellant's Form A. |
| 2-4-85 | | Case file mld USCA w/2 cert copies MO, Order, Notice of Appeal & docket entries. |

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

February 13, 1985

Mr. Walter J. Moeller
Rt. 2
West Fork, AR 72774

Re: 85-1211WA Walter J. Moeller, APPELLANT v. H. Carradine, Individually, et al
(See attached for complete title)

Dear Mr. Moeller:

We have received certified copies of notice of appeal and docket entries from the Clerk of the United States District Court, together with notification of payment of the $65 docket fee. In accordance, with the Federal Rules of Appellate Procedure and our local Rules, this appeal has today been assigned the docket number indicated.

Enclosed is a copy of an order entered today regarding record on appeal.

Sincerely,

Robert D. St. Vrain

Robert D. St. Vrain
Clerk of Court

lkl

enc.
cc: Hon. W. Asa Hutchinson, United States Attorney, P.O. Box 1524, Fort Smith, AR 72902
Ms. Beverly R. Stites, Clerk, United States District Court, 523 Federal Bldg., Fayetteville, AR 72701
84-5209

# United States Court of Appeals
## FOR THE EIGHTH CIRCUIT

**APPEAL BRIEFING SCHEDULE ORDER**

Circuit Appeal(s) #85-1211WA Walter J. Moeller v. H. Carradine, etc., et al

Dist. Court Case Number(s) 84-5209

The Court will consider this appeal on the original file of the United States District Court in lieu of the designated record required by Circuit Rule 7.

APPELLANT BRIEF. March 28, 1985

APPELLEE BRIEF: April 29, 1985

Signed: Linda L Penberthy

Linda L. Penberthy,
Senior Deputy Clerk

Date: February 13, 1985

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

February 25, 1985

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: No. 85-1211WA Walter J. Moeller v. H. Carradine. et al

Dear Sir:

Enclosed please find copy of an order entered today at the direction of the Court.

Sincerely,

Robert D. St. Vrain

Robert D. St. Vrain
Clerk of Court

dw
enc

copy
Hon. W. Asa Hutchinson, United States Attorney, P.O. Box 1524
Fort Smith, AR 72902
Ms. Beverly R. Stites, Clerk, U.S. District Court, Federal Building
Fayetteville, AR 72701
84-5209

# United States Court of Appeals

## FOR THE EIGHTH CIRCUIT

No. 85-1211WA September Term, 1984

Walter J. Moeller,
Appellant,

vs.

H. Carradine, etc., et al,
Appellees.

Appeal from the United States District Court for the Western District of Arkansas

This pro se appeal arises from an order entered by the United States District Court for the Western District of Arkansas in case No. 84-5209. The Court has carefully reviewed the District Court file in connection therewith.

It is ordered by the Court that appellant show cause, within 15 days of the date of this order, why the judgment of the District Court should not be summarily affirmed.

February 25, 1985

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

March 21, 1985

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: No. 85-1211-WA Walter J. Moeller vs. H. Carradine, etc., et al

Dear Mr. Moeller:

Enclosed is a copy of an order entered by us today at the direction of the court.

Sincerely,

Michael E. Gans

Michael E. Gans
Chief Deputy

MEG/cgj

Enclosure

pc: Hon. W. Asa Hutchinson
Ms. Beverly R. Stites, Clerk, U.S. District Court

FOR INFO ONLY:
Honorable H. Franklin Waters
(84-5209)

# United States Court of Appeals

**FOR THE EIGHTH CIRCUIT**

| | | |
|---|---|---|
| No. 85-1211-WA | * | SEPTEMBER TERM 1984 |
| Walter J. Moeller, | * | |
| Appellant, | * | |
| vs. | * | |
| H. Carradine, etc., et al | * | Appeal from the United States District Court for the Western District of Arkansas |
| Appellees. | * | |

On February 25, 1985, the Court directed appellant to show cause why the judgment of the District Court should not be summarily affirmed. The Court has carefully considered appellant's response to the show cause order, as well as the original file of the District Court, and it is hereby ordered that the judgment of the District Court dismissing the complaint with prejudice be AFFIRMED. See, 8th Cir. R. 12(a).

March 21, 1985

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

April 24, 1985

Mr. Walter J. Moeller

Hon. W. Asa Hutchinson
United States Attorney

Re: No. 85-1211-WA. Walter J. Moeller v. H. Carradine, etc., et al.

Dear Sirs:

Enclosed please find copy of order entered today at the direction of the Court.

Sincerely,

Robert D. St. Vrain
Clerk of Court

rmh

Enclosure

cc: Ms. Beverly R. Stites, Clerk
(84-5209)

# United States Court of Appeals

## FOR THE EIGHTH CIRCUIT

No. 85-1211-WA. September Term, 1984

WALTER J. MOELLER,

Appellant,

VS.

H. CARRADINE, ETC., ET AL.,

Appellees.

Appeal from the United States District Court for the Western District of Arkansas

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

April 24, 1985

2 April 1985

Robert D. St. Vrain, Clerk
United States Court of Appeals
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

Re: No. 85-1211-WA Walter J. Moeller vs. H. Carradine, et al

Dear Sir:

In regard to the reference case, it is requested that I be furnished the names of all the judges responsible for the issuance of the Order to Show Cause dated 25 February 1985.

Sincerely,

Walter J. Moeller
Route 2
West Fork, AR 72774
Pro Se
(501) 839-2484

2 April 1985

Robert D. St. Vrain, Clerk
United States Court of Appeals
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

Re: No. 85-1211-WA Walter J. Moeller vs. H. Carradine, et al

Dear Sir:

In regard to the reference case, it is requested that I be furnished the names of all the judges responsible for the order dismissing the reference case dated 21 March 1985.

Sincerely,

Walter J. Moeller
Route 2
West Fork, AR 72774
Pro Se
(501) 839-2484

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

April 5, 1985

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: No. 85-1211-WA Walter J. Moeller vs. H. Carradine, etc., et al

Dear Mr. Moeller:

The names of the judges serving on an Administrative Panel, such as the one which directed the order to show cause, are not made public.

Please contact me if you have any further questions.

Sincerely,

Michael E. Gans

Michael E. Gans
Chief Deputy

MEG/cgj

15 April 1985

Robert D. St. Vrain, Clerk
United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

Dear Sir:

Reference No. 85-1211-WA, Walter J. Moeller vs. H. Carradine, etc., et al.

Reference is made to your letter dated 5 April 1985 in reply to my letter dated 2 April 1985 requesting the names of the judges responsible for issuing the Order to Show Cause dated 25 February 1985 in the reference case.

In your letter you state that the names of the judges are not made public. This would appear to be in violation of the Freedom of Information Act since the court's records are public records.

Reference is also made to Title 28 U.S.C. Sect. 1691 which requires the seal of the Court on all writs and processes issuing from the court. The seal of the Court was conspicuously absent for the reference Order to Show Cause.

Rule 5 (d) of the United States Court of Appeals Eighth Circuit requires three judges to issue an Order to Show Cause.

It is therefore again demanded that I be furnished the names of all the judges who participated in issuing the Order to Show Cause in the above captioned case.

Yours truly,

Walter J. Moeller
Route 2
West Fork, AR 72774

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425-5600
FTS: 279-5600

April 18, 1985

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: No. 85-1211-WA Walter J. Moeller vs. H. Carradine, etc., et al

Dear Mr. Moeller:

The three judges who directed the entry of a show cause order in the referenced case and who considered your response to the order, are Myron H. Bright, Donald R. Ross and Richard S. Arnold. At present the petition for rehearing en banc is before all members of the court and you will be promptly notified of any action taken by the court in this case.

Sincerely,

Robert D. St. Vrain
Clerk of Court

RDStV/cgj

Enclosure

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

WALTER J. MOELLER — APPELLANT-PLAINTIFF
PRO SE

v. — CIVIL ACTION NO. 85-1211-WA

H. CARRADINE, Individually — APPELLEES-DEFENDANTS
Et al

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Walter J. Moeller, Appellant-Plaintiff in this case, hereby appeals to the Supreme Court of the United States from the judgement of the United States Court of Appeals for the Eighth Circuit, dated 21 March 1985, affirming the judgement of the United States District Court for the Western District of Arkansas, Fayetteville Division, dated 3 January 1985.

This appeal is taken pursuant to Title 28 U.S.C. Sec. 1252.

Walter J. Moeller

Walter J. Moeller, Pro Se
Route 2
West Fork, AR 72774
(501) 839-2484

15 April 1985

PROOF OF SERVICE - AFFIDAVIT

I, Walter J. Moeller, Appellant-Plaintiff Pro Se herein, depose and say that on the 16th day of April 1985 I served a copy of the Notice of Appeal dated 15 April 1985, Civil Action No. 85-1211-WA, by mailing a copy, in duly addressed envelope, with first class postage prepaid, to each of the Appellee-Defendants, as listed below.

H. CARRADINE, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

and

DALE FANNON, Individually
Chief, Tax Accounting Division
Internal Revenue Service
3651 Interregional Highway
Austin, TX 78740

and

ROSCOE L. EGGERS, JR., Individually
Commissioner, Internal Revenue Service
1111 Constitution Avenue N.W.
Washington, D.C. 20224

and

WILLIAM F. BARLOW, Individually
District Director
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

MARLA J. WALKER, Individually
Revenue Agent
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

RANDALL HAYNES, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

PAUL D. WILLIAMS, Individually
Director, Internal Revenue Service
Federal Building
35 East Mountain Street
Fayetteville, AR 72701

and

RICHARD C. VOSKUIL, Individually
Regional Commissioner
Internal Revenue Service
7839 Churchill Way
Dallas, Texas 75251

and

V. REGAN, Individually
Chief, Research Group
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

M. SORRELLS, Individually
Chief, ACS Branch
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

JAMES WESTBROOK, Individually
Internal Revenue Service
Federal Building, Room 210
35 East Mountain Street
Fayetteville, AR 72701

and

S. R. McKEEVER, Individually
Revenue Officer,
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

To the United States, by mailing a copy in a duly addressed envelope with first class postage prepaid, to:

Solicitor General
Department of Justice
Washington, D.C. 20530

and

Robert D. St. Vrain, Clerk
United States Court of Appeals
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

and

Clerk,
United States District Court
Western District of Arkansas
Fayetteville Division
Federal Office Bldg.
Fayetteville, AR 72701

and

Clerk,
The Supreme Court of the United States
1 First Street N.E.
Washington D.C. 20543

All parties required to be served have been served and the list of such parties is set forth above.

Walter J. Moeller

Walter J. Moeller, Pro Se
Route 2
West Fork, AR 72774
(501) 839-2484

Subscribed and sworn to before me, at _____this 5 day of April, 1985.

Kim Cox

**United States Court of Appeals**
*For The Eighth Circuit*

Robert D. St. Vrain
*Clerk*

U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

314-425
FTS: 27

April 19, 1985

Mr. Walter J. Moeller
Route 2
West Fork, Arkansas 72774

Re: No. 85-1211WA Walter J. Moeller v. H. Carradine, et al.

Dear Mr. Moeller:

We have filed your notice of appeal to the Supreme Court of the United States. A copy is enclosed for inclusion in your jurisdictional statement to be filed with that Court. For further answers to your inquiries I suggest you contact the Clerk of the Supreme Court, address of which is listed below for your information:

Mr. Alexander Stevas, Clerk
Supreme Court of the United States
1 First Street, N. E.
Washington, D. C. 20543

Sincerely,

Robert St. Vrain

Robert St. Vrain
Clerk of Court

RStV/cg

Enclosure

FILED

APR 18 1985 8

ROBERT D. ST. VRAIN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

WALTER J. MOELLER
PRO SE — APPELLANT-PLAINTIFF

v. — CIVIL ACTION NO. 85-1211-WA

H. CARRADINE, Individually
Et al — APPELLEES-DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Walter J. Moeller, Appellant-Plaintiff in this case, hereby appeals to the Supreme Court of the United States from the judgement of the United States Court of Appeals for the Eighth Circuit, dated 21 March 1985, affirming the judgement of the United States District Court for the Western District of Arkansas, Fayetteville Division, dated 3 January 1985.

This appeal is taken pursuant to Title 28 U.S.C. Sec. 1252.

Walter J. Moeller

Walter J. Moeller, Pro Se
Route 2
West Fork, AR 72774
(501) 839-2484

15 April 1985

RECEIVED
APR 18 1985
U.S. COURT OF APPEALS
EIGHTH CIRCUIT

PROOF OF SERVICE - AFFIDAVIT

I, Walter J. Moeller, Appellant-Plaintiff Pro Se herein, depose and say that on the ___16th_____day of April 1985 I served a copy of the Notice of Appeal dated 15 April 1985, Civil Action No. 85-1211-WA, by mailing a copy, in duly addressed envelope, with first class postage prepaid, to each of the Appellee-Defendants, as listed below.

H. CARRADINE, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

and

DALE FANNON, Individually
Chief, Tax Accounting Division
Internal Revenue Service
3651 Interregional Highway
Austin, TX 78740

and

ROSCOE L. EGGERS, JR., Individually
Commissioner, Internal Revenue Service
1111 Constitution Avenue N.W.
Washington, D.C. 20224

and

WILLIAM F. BARLOW, Individually
District Director
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

MARLA J. WALKER, Individually
Revenue Agent
Internal Revenue Service
700 W. Capital
Little Rock, AR 72201

and

RANDALL HAYNES, Individually
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

PAUL D. WILLIAMS, Individually
Director, Internal Revenue Service
Federal Building
35 East Mountain Street
Fayetteville, AR 72701

and

RICHARD C. VOSKUIL, Individually
Regional Commissioner
Internal Revenue Service
7839 Churchill Way
Dallas, Texas 75251

and

V. REGAN, Individually
Chief, Research Group
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

M. SORRELLS, Individually
Chief, ACS Branch
Internal Revenue Service
P.O. Box 50369
Dallas, TX 75250

and

JAMES WESTBROOK, Individually
Internal Revenue Service
Federal Building, Room 210
35 East Mountain Street
Fayetteville, AR 72701

and

S. R. McKEEVER, Individually
Revenue Officer,
Internal Revenue Service
700 West Capital
Little Rock, AR 72201

To the United States, by mailing a copy in a duly addressed envelope with first class postage prepaid, to:

Solicitor General
Department of Justice
Washington, D.C. 20530

and

Robert D. St. Vrain, Clerk
United States Court of Appeals
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

and

Clerk,
United States District Court
Western District of Arkansas
Fayetteville Division
Federal Office Bldg.
Fayetteville, AR 72701

and

Clerk,
The Supreme Court of the United States
1 First Street N.E.
Washington D.C. 20543

All parties required to be served have been served and the list of such parties is set forth above.

Walter J. Moeller

Walter J. Moeller, Pro Se
Route 2
West Fork, AR 72774
(501) 839-2484

Subscribed and sworn to before me, at _____ this 15 day of April, 1985.

Kim Cox